

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2018-171-E**

IN RE: Patricia Lutz, )  
 )  
 Complainant/Petitioner, )  
 )  
 v. )  
 )  
 South Carolina Electric & Gas )  
 Company, )  
 )  
 Defendant/Respondent )  
 \_\_\_\_\_ )

**MOTION TO DISMISS AND  
 TO HOLD DEADLINES AND  
 HEARING DATES IN  
 ABEYANCE**

Pursuant to 10 S.C. Code Ann. Regs. 103-829 (2012) and Rule 12(f), SCRCP, South Carolina Electric & Gas Company (“SCE&G” or “the Company”) herein moves that the Public Service Commission of South Carolina (“Commission”) dismiss the above-captioned matter for the reasons set forth herein. SCE&G further moves that the Commission hold in abeyance the deadlines and hearing date until such time as the Commission may consider and resolve this matter. In support of this motion, SCE&G would respectfully show as follows:

**BACKGROUND**

This is the second Complaint filed by Ms. Patricia Lutz against SCE&G within the last nine months, and, therefore, the Commission undoubtedly is familiar with

the circumstances surrounding her electric service history with the Company.<sup>1</sup> Briefly, however, on or about May 19, 2015, Ms. Lutz established an electric service account for the residence located at 51 Bear Creek Road, Little Mountain, South Carolina 29075 (“Residence”), which is located in the service area assigned to SCE&G pursuant to S.C. Code Ann. § 58-27-640. Beginning on or about June 30, 2017, Ms. Lutz contacted the Company on a number of occasions regarding her bill and usage. She also repeatedly advised SCE&G that she wanted to disconnect from SCE&G’s electric system, wanted SCE&G to remove its lines and facilities serving the Residence, and no longer wanted to pay for electric service rendered by the Company. SCE&G advised Ms. Lutz on a number of occasions that it was unwilling to permit another electric supplier to serve within its assigned service area. SCE&G also advised Ms. Lutz that, if she requested the Company to discontinue electric service and remove the lines and facilities serving the Residence, it would comply with her request, but that the Company would continue to be the provider for this location.

Nevertheless, on August 18, 2017, Ms. Lutz contacted SCE&G and requested that the Company disconnect service to the Residence beginning on August 22, 2017. Ms. Lutz further advised SCE&G that, while she would still be living at the location, she would no longer be using the Company’s electric service and that she wanted the meter, service line, and security line removed from her property. Accordingly, on

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<sup>1</sup> For the sake of brevity, SCE&G references and incorporates herein the facts and arguments set forth in its October 5, 2017, Motion to Dismiss, to specifically include the Affidavit of Ms. Carolyn B. Frick attached as Exhibit A thereto, and the direct testimonies of Ms. Carolyn Frick and Mr. Joshua Jackson, all of which were filed in Docket No. 2017-291-E and read into the record of the merits hearing held on November 7, 2017 in that matter.

August 22, 2017, SCE&G complied with Ms. Lutz's request, disconnected service, removed the line and facilities serving her Residence, and removed the security light located on her property.

On or about September 18, 2017, Ms. Lutz filed a complaint with the Commission, which was docketed as 2017-291-E. Therein and in subsequent communications, she requested a letter from SCE&G releasing her from its service territory, generally complained about the Company's rates, and asserted that, while a customer of SCE&G, she experienced power surges and poor customer service. She also complained about certain Newberry County Sheriff's Office incident reports ("Incident Reports") and that her health was affected by her lack of electricity.

The Commission held a hearing on this matter on November 7, 2017. Following oral arguments on the Company's outstanding motions to dismiss and strike, the Commission recessed the hearing at which time a third-party neutral, who had been engaged by the Commission, facilitated discussions between the parties to determine if the issues could be resolved. After the parties and the neutral came to an impasse, the Commission reconvened the hearing and gave Ms. Lutz the opportunity to present testimony and evidence in support of her claims and to cross-examine the two witnesses presented by SCE&G. The Commission also "took special care to view her complaint in the light most favorable to her and gave her very broad latitude in presenting her case." Order No. 2017-728, dated November 29, 2017.

Nevertheless, the Commission found that Ms. Lutz failed to meet her burden to show that she met the "very specific requirements" of S.C. Code Ann. § 58-27-660

which are necessary for the Commission to order a reassignment of her Residence to another electric service territory. *Id.* Specifically, the Commission found that Ms. Lutz failed to show Mid-Carolina Electric Cooperative and SCE&G had agreed to such a change or that SCE&G's service was inadequate or undependable. *Id.* By letter dated December 12, 2017, Ms. Lutz petitioned the Commission to reconsider its findings. The Commission denied this request and confirmed its prior decision, finding that Ms. Lutz failed to produce adequate evidence that SCE&G's service was inadequate or undependable. Order No. 2017-775, dated December 29, 2017, at 5. The Commission also held that it is prohibited from considering cost differential in determining whether to reassign any portion of service territory. *Id.* Ms. Lutz did not appeal these decisions.

On May 29, 2018, SCE&G was served with the instant Complaint, which Ms. Lutz filed on May 17, 2018. Therein, Ms. Lutz raises the same issues presented in Docket No. 2017-291-E. Namely, she requests a "Letter of Release," references SCE&G's rates, complains about the Company's customer service, asserts that she experienced "power surges," claims that her health is affected by the lack of electricity, and disputes the Incident Reports. She also requests that SCE&G be required to pay for certain unnamed expenses. Finally, she makes general statements about purported disputes regarding the installation of solar panels at her property.

## ARGUMENT

### **I. The Complaint is Barred by the Doctrine of *Res Judicata* and Raises Redundant Issues.**

As a threshold matter, Ms. Lutz's assertions and relief sought are barred by the doctrine of *res judicata*. "Under the doctrine of *res judicata*, '[a] litigant is barred from raising any issues which were adjudicated in [a] former suit and any issues which might have been raised in [a] former suit.'" *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) (quoting *Hilton Head Ctr. of S.C., Inc. v. Pub. Serv. Comm'n of S.C.*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987)). "*Res judicata* is shown if (1) the identities of the parties is the same as a prior litigation; (2) the subject matter is the same as in the prior litigation; and (3) there was a prior adjudication of the issue by a court of competent jurisdiction." *Johnson v. Greenwood Mills, Inc.*, 317 S.C. 248, 250–51, 452 S.E.2d 832, 833 (1994). Moreover:

It is a fundamental principle of jurisprudence that material facts or questions which were directly in issue in a former action, and were there admitted or judicially determined, are conclusively settled by a judgment rendered therein, and that such facts or questions become *res judicata* and may not again be litigated in a subsequent action between the same parties or their privies, regardless of the form that the issue may take in the subsequent action.

*Laughon v. O'Braitis*, 360 S.C. 520, 527, 602 S.E.2d 108, 112 (Ct. App. 2004) (quoting 46 Am. Jur. 2d Judgments § 539 (1994)). Pursuant to Rule 12(f), SCRCP, upon motion

pointing out the defects complained of, any redundant matter also may be stricken from a pleading.

As described above, the Commission adjudicated in Docket No. 2017-291-E and twice rejected in Order Nos. 2017-728 and 2017-775 all of the issues Ms. Lutz now seeks to reassert in her instant Complaint. Ms. Lutz failed to seek appellate review of these decisions, thus rendering them the law of the case. *See Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) (“An unappealed ruling is the law of the case and requires affirmance.”). Because the issues presented by Ms. Lutz in this matter have been previously raised and ruled upon by the Commission, these issues are barred by the doctrine of *res judicata*. Furthermore, these issues are redundant to the matters at issue in that proceeding and should be stricken pursuant to Rule 12(f), SCRPC.

## **II. The Commission should dismiss the Complaint because Ms. Lutz does not have standing to pursue any claim against the Company.**

Notwithstanding the above, Ms. Lutz does not possess the requisite standing to bring a complaint against SCE&G because she currently is not an electric customer of SCE&G. To establish standing, a complainant has the burden of showing that (1) they have suffered an injury-in-fact; (2) there is a causal connection between the injury and the conduct about which they complain; and (3) it is likely, rather than merely speculative, that their alleged injury will be redressed by a favorable decision. *Sea Pines Ass'n for the Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res.*, 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001) (citing *Lujan v. Defenders of Wildlife*, 504 U.S.

555, 560-61 (1992)). Because Ms. Lutz voluntarily elected to disconnect from SCE&G's electric system and is no longer a customer of the Company, there is no injury related to SCE&G's service or service area about which she has suffered or can complain or which the Commission can redress. Ms. Lutz therefore does not possess the requisite standing to advance the Complaint.

**III. The Complaint fails to satisfy the Commission's pleading requirements and is too vague and ambiguous for a response.**

The Complaint also is legally insufficient and so deficiently drawn that it fails to support the request for a hearing or for further proceedings in this matter. Ms. Lutz makes vague assertions that she has experienced "power surges," received "wrong info (*sic*) from customer services," and has "mentioned" increases in SCE&G's rates. However, she fails to present any facts sufficient to demonstrate that SCE&G has failed to provide safe and reliable electric service and at rates that have been approved by the Commission or otherwise failed to comply with the Commission's regulations and other applicable law.

For this reason, the Complaint does not satisfy the Commission's pleading requirements which requires complaints to include "[a] concise and cogent statement of the factual situation surrounding the complaint" and "[a] concise statement of the nature of the relief sought." 10 S.C. Code Ann. Regs. 103-824(A); *see also* 10 S.C. Code

Ann. Regs. 103-819. SCE&G also is not capable of answering the Complaint<sup>2</sup> or filing direct testimony addressing her allegations in compliance with the Notice and pre-filed testimony schedule issued by the Clerk's Office in this matter because Ms. Lutz fails to set forth facts sufficient to place the Company on notice of the basis of her claims. *See* 10 S.C. Code Ann. Regs. 103-826(A) (requiring answers to "be drawn so as to fully and completely advise the Commission and any party as to the nature of the defense" and to "admit or deny, specifically and in detail, each material allegation."); *Burns v. Wannamaker*, 286 S.C. 336, 339, 333 S.E.2d 358, 360 (Ct. App. 1985) ("The purpose of a pleading is to put the adversary on notice as to the issues involved.").

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<sup>2</sup> While SCE&G asserts that the Complaint is so defectively drawn that it cannot answer the vague allegations set forth therein, the Company denies each and every allegation presented by Ms. Lutz. For the reasons set forth herein, the Company denies that Ms. Lutz is entitled to a letter from SCE&G releasing her from its service. The Company also denies that Ms. Lutz has experienced power surges or received erroneous information from the Company's customer services department. SCE&G also denies that it filed false police reports against Ms. Lutz or improperly operated or monitored its electric service equipment and system. The Company further asserts that its rate schedules and any requested rate adjustments have been subject to Commission approval and have been determined to be lawful, just, reasonable, unfairly discriminatory, and otherwise in accordance with applicable law. With respect to Ms. Lutz's health concerns, SCE&G is without sufficient knowledge or information to form a belief as to the truth of the matter asserted. Further responding, the Company denies that it has endangered her life or acted in any manner that is contrary to its terms and conditions of service or to applicable statutory and regulatory law. The Company notes, however, that it stands willing and able to provide electric service to Ms. Lutz upon her request and subject to SCE&G's Commission-approved rates, terms, and conditions. SCE&G also asserts that the Commission is without jurisdiction to require SCE&G to compensate Ms. Lutz for any alleged expenses, to address any disputes Ms. Lutz may have with third-party solar providers, or to vacate or adjudicate any claims relating to police reports. To the extent that any further allegations set forth in the Complaint require an answer, SCE&G denies the same.



Because the Complaint is so defectively drawn, the Commission should dismiss this matter as failing to meet the pleading requirements and for insufficiently placing the Company on notice as to the specific issues raised therein.

**IV. The Complaint fails to state a claim upon which relief can be granted.**

Further, this matter should be dismissed for failing to state a claim upon which relief can be granted because Ms. Lutz cannot prevail on any legal theory. A defendant may move for dismissal when the plaintiff does not allege facts sufficient to constitute a cause of action. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999). If the plaintiff is not entitled to relief, then it is proper to dismiss the case. *Spence v. Spence*, 368 S.C. 106, 122, 628 S.E.2d 869, 877 (2006).

Ms. Lutz's Complaint is premised upon her request that she be released from SCE&G's service and be allowed to obtain service from another electric supplier. *But see* Order No. 2017-775 at 5 (finding the evidence "clearly showed Ms. Lutz's motivation for seeking a change in electric suppliers was cost" but recognizing S.C. Code Ann. § 58-27-650(B) "prohibits the Commission from considering cost differential in determining whether to reassign any portion of service territory"). As previously determined by the Commission, however, except as provided for in S.C. Code Ann. § 58-27-660(2), another electric supplier may serve customers in SCE&G's assigned service area only upon agreement of both the Company and the other electric supplier. *See* S.C. Code Ann. §§ 58-27-650(A), -660(1). Order No. 2017-728. Ms. Lutz has not presented any facts sufficient to demonstrate or even suggest that another

electric supplier has entered into an agreement with SCE&G to serve the Residence. Moreover, Ms. Lutz also has not presented any facts to support a claim that the electric service rendered by SCE&G to the Residence is inadequate or undependable in any way. *See also* S.C. Code Ann. § 58-27-660(2); Order No. 2017-775 at 5 (finding Ms. Lutz failed to present adequate proof that the Company's service was inadequate). Ms. Lutz's Complaint therefore should be dismissed as her requested relief is neither warranted by the facts alleged nor permissible under governing law.

**V. The Complaint seeks Relief that is Not Within the Commission's Jurisdiction.**

Finally, to the extent Ms. Lutz seeks to recover alleged expenses from SCE&G, to address any disputes Ms. Lutz may have with third-party solar providers, or to vacate or adjudicate any claims relating to police reports, those claims must be dismissed for lack of jurisdiction. "[T]he Public Service Commission is a body of limited jurisdiction and has only such powers as are conferred, expressly or by reasonably necessary implication, or such as are merely incidental to the powers expressly granted." *Black River Elec. Co-op., Inc. v. Pub. Serv. Comm'n*, 238 S.C. 282, 292, 120 S.E.2d 6, 11 (1961). Pursuant to S.C. Code Ann. § 58-3-140(A), "the commission is vested with power and jurisdiction to supervise and regulate the rates and service of every public utility in this State and to fix just and reasonable standards, classifications, regulations, practices, and measurements of service to be furnished, imposed, or observed, and followed by every public utility in this State." *See also* S.C. Code Ann. § 58-27-1940; Order No. 2005-328, dated June 22, 2005,

Docket No. 2004-357-WS at 5 (“The Commission lacks jurisdiction to award damages to customers as the result of action or inaction of the Company.”). Because the Commission lacks statutory authority and jurisdiction to award damages, to resolve a customer’s vague dispute with a non-utility third party, or to address alleged and unsubstantiated matters of a criminal nature, these issues should be dismissed.

### **CONCLUSION**

For the foregoing reasons, SCE&G respectfully requests that Ms. Lutz’s Complaint be dismissed. SCE&G further moves that the Commission hold in abeyance the deadlines and hearing date set forth in the Notice, Notice of Hearing, and pre-filed testimony schedule, which were issued by the Clerk’s Office on May 29, 2018, until such time as this matter may be considered and resolved by the Commission.

Respectfully submitted,

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